

REMARKS

The enclosed is responsive to the Examiner's Final Office Action mailed on December 06, 2006 and is being filed pursuant to a Request for Continued Examination (RCE) as provided under 37 CFR 1.114. No cancellations or amendments have been made to the claims. At the time the Examiner mailed the final office action claims 40-55 were pending but not considered on the grounds that they were directed to non-elected subject matter.

The Examiner's refusal to consider the new claims should have been communicated to the Applicant as a "non-responsive" reply rather than as a final office action. That is, the Applicant's response mailed 9/28/06 (which added the present claims) should have been treated as being non-responsive to the Examiner's Office Action of June 28, 2006. See, MPEP 821.03. As a consequence, the Applicant has to bear the cost of an RCE rather than have an opportunity to resolve this issue with the Examiner before prosecution on the merits is properly closed.

The Applicant respectfully requests withdrawal of the Final Office action and a full crediting of deposit account # 02-2666 for the cost of the RCE.

In advance of the Examiner's consideration of mailing a non-responsive argument to the Office Action of June 28, 2006, the Applicant submits the following comments.

In the Office Action mailed May 4, 2006, the Examiner restricted the present invention to invention I (emphasis added) "drawn to requesting identification keys of **archived** data objects and deleting at least one data object" and invention II (emphasis added) "drawn to **archiving** data objects". See, Examiner's Office Action, mailed 5/4/06, p. 2. The Applicant elected invention I in a response filed June 1, 2006. See, Applicant's Office Action Response, mailed 6/1/06.

The Applicant respectfully submits that the present set of claims are properly within invention I and not within invention II.

The Examiner's own definition of inventions I and II acknowledge that claims within the bounds of invention I may permissibly refer to the existence of **archived** data objects, while, claims directed to invention II must be directed to the actual step of archiving data objects (i.e., **storing** objects **into** archival storage).

The claims now presented for examination refer to the existence of an archived data object ("content of an archived version of said data object") and, moreover, do not affirmatively recite the step of storing an object into archival data storage. Therefore the claims being presented for examination fall within the boundaries of invention I, while, at the same time, do not fall within the boundaries of invention II.

Therefore the Applicant respectfully submits that the Examiner's refusal to consider the newly presented claims is in error and that the claims as presented should be examined. "[A non responsive reply to newly added claims after an

election] is not applicable . . . where applicant presents claims that could not have been restricted from the claims drawn to [the] elected invention had they been presented earlier."

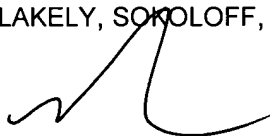
A proper articulation of the Applicant's invention should refer to objects that have already been archived. If the Applicant is not permitted to entertain these features in the present claims, the Applicant will have no choice but to abandon the present application and file a continuation for the sole purpose of receiving another restriction requirement. The Applicant will traverse the second restriction and move on to appeal. In the interests of efficiency, the Applicant respectfully requests that the Examiner simply agree to consider the claims as presented.

CONCLUSION

Applicants respectfully submit that all rejections have been overcome and that all pending claims are in condition for allowance.

If there are any additional charges, please charge them to our Deposit Account Number 02-2666. If a telephone conference would facilitate the prosecution of this application, Examiner is invited to contact Robert B. O'Rourke at (408) 720-8300.

Respectfully Submitted,
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